EUB Alberta Energy and Utilities Board

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Directive 019

Revised edition February 20, 2007

EUB Compliance Assurance—Enforcement

The Alberta Energy and Utilities Board (EUB/Board) has approved this directive on February 20, 2007.

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Chairman

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1 Scope

Enforcement is one of several Alberta Energy and Utilities Board (EUB/Board) compliance assurance processes that support the EUB's mission to ensure that the discovery, development, and delivery of Alberta's resources take place in a manner that is fair, responsible, and in the public interest.

The ultimate goal of EUB enforcement is to ensure compliance with the requirements that are written, monitored, and enforced on behalf of Albertans, our stakeholders. Compliance ensures that resource activity within the province is conducted in a manner that protects public safety, minimizes environmental impact, preserves equity, and ensures effective conservation of resources.

This directive specifically focuses on the enforcement aspect of compliance assurance and applies to all EUB requirements and processes except utility rate matters.

The EUB will continue to collect feedback regarding the directive. This information will be reviewed and revisions will be made as necessary.

Effective January 1, 2006, *Directive 019* replaced *Informational Letter (IL) 99-4: EUB Enforcement Process, Generic Enforcement Ladder and Field Surveillance Enforcement Ladder*. In addition, it superseded the enforcement ladders of all other EUB directives.

Questions regarding *Directive 019* should be addressed to the EUB Corporate Compliance Group: 640 – 5 Avenue SW, Calgary, Alberta T2P 3G4; telephone (403) 297-3710; e-mail EUB.ComplianceCoordination@gov.ab.ca.

2 Enforcement Principles and Objectives

Enforcement of EUB requirements continues to be a cornerstone of our compliance strategy. Based on stakeholder feedback and EUB experience, *Directive 019* updates the EUB's enforcement process to improve process clarity, focus, and efficiency. It is built on the principles that

- public safety and environmental protection will not be compromised,
- enforcement will be timely, effective, and appropriate, and
- the licensee is responsible for compliance with EUB requirements and processes.

The purpose of this directive is to clearly explain

- what licensees must do when a noncompliance is identified by the EUB,
- the enforcement process and consequences for Low and High Risk noncompliances,
- the EUB appeal process,
- the EUB voluntary self-disclosure policy, including the rules and benefits of voluntary self-disclosure, and
- the availability of compliance information.

The EUB will monitor industry performance and make changes to its compliance assurance processes as necessary to ensure high compliance rates overall. Stakeholders will be consulted regarding future changes.

3 Enforcement Based on Risk

The EUB uses a Risk Assessment Matrix (available on the EUB Web site www.eub.ca under Industry Zone : Compliance and Enforcement) to predetermine the level of risk inherent in noncompliance of each EUB requirement. Each requirement will have an associated Low Risk or High Risk rating based on

- health and safety,
- environmental impact,
- conservation, and
- stakeholder confidence in the regulatory process.

Requirements regarding equity, orderly and efficient development, and data collection will be risk assessed using the stakeholder confidence column in the risk matrix. If the assessment result on all of the above areas is minimal, the noncompliance is considered Low Risk. If the effect on these areas is more significant, the noncompliance is considered High Risk.

The EUB continues to classify all of its requirements as Low or High Risk and document them under the appropriate compliance category. For an overview of current EUB categories, contact personnel, and risk assessed noncompliances, go to the EUB Web site www.eub.ca (EUB Home : Industry Zone : Compliance and Enforcement).

4 Enforcement

How does the EUB deal with Low and High Risk noncompliances?

The following sections set out the processes and consequences for Low and High Risk noncompliance (see Tables 1 and 2). The processes describe the enforcement actions both for individual events and for persistent noncompliance.

How will the licensee know that the enforcement process has been initiated?

Notice of the EUB's determination of a noncompliance event and the resulting enforcement actions will be communicated to you in writing, with the timelines for compliance based on the date of the EUB written communication (by letter, inspection form, e-mail, fax, etc.).

Will the EUB escalate enforcement?

Yes. The EUB will escalate enforcement actions as necessary using the framework described in Tables 1 and 2. In the event that initial enforcement does not result in compliance or when a licensee has been identified as persistently noncompliant, senior EUB personnel will contact licensees before enforcement actions are escalated.

It is important to note that senior EUB staff involvement is not necessary for the initial enforcement action, but is used when a licensee fails to comply with the initial enforcement action. This rarely occurs; however, when it does, the EUB considers this a grave situation, in that the licensee either cannot or will not comply. Instead of automatically sending out a letter and escalating enforcement, which may not change the licensee's ability or willingness to comply, the EUB will look at the situation with the benefit of the experience of a senior EUB employee and connect with that licensee to convey the gravity of the situation, either with a phone call or a face-to-face meeting. Through this route, the best way can be found to have the noncompliance rectified.

How will I know that the enforcement process is over?

For High Risk enforcement, you will be advised by written communication that you have achieved compliance.

How does the EUB deal with corporate amalgamations and transfers?

Until transfers are complete and approved by the EUB, the licensee of record is responsible for licensed wells, facilities, and pipelines. Licensees are required to have the appropriate rights to hold a valid licence upon transfer. Once the transfer is approved by the EUB, the new licensee is responsible. Noncompliances that are identified by the EUB or the new licensee and are suitably addressed by the new licensee within the first 90 days after the corporate amalgamation date or transfer date approved by the EUB will not be subject to escalation of enforcement consequences.

4.1 Low Risk

What will happen if the licensee is identified as persistently noncompliant?

If you are a licensee identified as persistently noncompliant, you must

- develop and implement a written action plan, which must explain
  - why the noncompliance events occurred or the previous action plan failed, and
  - how you will improve your compliance;

- review the action plan in a meeting with the EUB group that initiated the notice of noncompliance; and
- have the action plan approved by the EUB group.

Licensees that fail to improve their Low Risk noncompliance ratings after a subsequent EUB assessment will be subject to one or more of the following enforcement actions upon the next noncompliance event:

- noncompliance fees
- self-audit or inspections
- [illegible]-party audits or inspections
- partial or full suspension
- suspension and/or cancellation of permit, licence, or approval
- "Refer" status: focused or global

The EUB has developed a Persistent Noncompliance Framework (available on the EUB Web site www.eub.ca under Industry Zone : Compliance and Enforcement) for guidance respecting early intervention and persistent noncompliance.

Will the licensee be subject to the High Risk enforcement process if deemed to be persistently noncompliant for Low Risk noncompliance events?

No. However, the EUB will take the necessary actions to ensure that compliance is achieved.

4.2 High Risk

Will the EUB advise the licensee of impending identification as being persistently noncompliant?

Yes, the EUB will notify licensees of a possible designation of persistence.

How will the EUB ensure that High Risk enforcement actions are fair and consistent?

Ensuring a level playing field is important to the EUB. Fairness and consistency are provided for by the use of the Risk Assessment Matrix. This assessment tool helps to ensure the appropriate compliance process for our requirements and focused training of EUB staff. In addition, the EUB maintains open channels of communication with all stakeholders, as well as an appeal process.

EUB compliance assurance policy processes are subject to internal audit, reporting, and accountability processes. EUB internal governance systems establish clear roles and responsibilities to ensure that policies are applied fairly and consistently.

What happens if the licensee does not comply with an Order of the Board?

The EUB will take the necessary steps within its jurisdiction to ensure public safety and protection of the environment. For example, as set forth in the *Oil and Gas Conservation Act* (*OGCA*), steps may include the EUB taking over operations, suspending operations, and/or conducting cleanup or abandonment operations. Following this, the EUB will undertake debt enforcement proceedings to recover any costs it has expended in so doing. In addition, in accordance with Section 106 of the *OGCA*, the EUB may initiate proceedings to make a declaration naming accountable individuals. Once named, such individuals may be prevented from conducting business with the EUB on behalf of any licensee in the capacity of an officer or decision maker.

Table 1. EUB Enforcement of Low Risk Noncompliance*

1st EUB Notice of Low Risk Noncompliance	2nd EUB Notice of Low Risk Noncompliance	Low Risk Enforcement*
What must the licensee do when the EUB identifies a noncompliance event? After receiving a 1st EUB Notice of Low Risk Noncompliance, the licensee must • correct/address the Low Risk noncompliance within the time specified by the EUB group that initiated the notice, • notify the EUB group that the Low Risk noncompliance has been corrected/addressed in the specified time, and • pay any noncompliance fee set out in the notice.	**What must the licensee do when it receives a 2nd EUB Notice of Low Risk Noncompliance?** After receiving a 2nd EUB Notice of Low Risk Noncompliance, the licensee must • correct/address the Low Risk noncompliance in the time specified by the EUB group, • notify the EUB group that the Low Risk noncompliance has been corrected/addressed in the specified time, and • pay any noncompliance fee set out in the 1st notice.	**What must the licensee do when the EUB uses Low Risk Enforcement?** The licensee must • immediately correct/address the Low Risk noncompliance within the time specified by the EUB group, • notify the EUB group that the Low Risk noncompliance has been corrected/addressed in the specified time, and • provide a written explanation acceptable to the EUB group addressing the failure to respond to the notices and detailing steps to prevent future occurrences. The EUB group will also apply one or more of the following enforcement actions, as its authority provides: • noncompliance fees • partial or full suspension • suspension and/or cancellation of permit/licence, or approval • issuance of an Order (Miscellaneous, Closure, or Abandonment) • Refer status: focused or global
When is compliance achieved for this event? Immediately after the licensee corrects/addresses the Low Risk noncompliance event, notifies the EUB group, and pays the noncompliance fee, if applicable.	**When is compliance achieved for this event?** Immediately after the licensee corrects/addresses the Low Risk noncompliance event, notifies the EUB group, and pays the noncompliance fee, if applicable.	**When is compliance achieved for this event?** Immediately after the licensee corrects/addresses the Low Risk noncompliance event, provides a written explanation acceptable to the EUB group, and pays the noncompliance fee, if applicable.
What will happen if the licensee does not correct/address the Low Risk noncompliance event in the time specified by the EUB group? The licensee will receive a 2nd EUB Notice of Low Risk Noncompliance.	**What will happen if the licensee does not correct/address the Low Risk noncompliance event in the time specified by the EUB group?** The licensee will receive a Low Risk Enforcement.	**What will happen if the licensee does not correct/address the Low Risk noncompliance event in the time specified?** The licensee will receive additional Low Risk enforcement actions, including meeting with senior EUB personnel.

* Senior EUB personnel will contact the licensee before enforcement actions are escalated.

Table 2. EUB Enforcement of High Risk Noncompliance*

High Risk Enforcement Action 1	High Risk Enforcement Action 2 (Persistent Noncompliance)*	High Risk Enforcement Action 3*
What must the licensee do when the EUB identifies a High Risk noncompliance event? The licensee must • immediately correct/address the High Risk noncompliance, • if necessary, suspend operations (partial or full), when safe to do so, to remove existing or potential impact/hazard (suspension will not occur if it results in an increased impact/hazard to the environment or the public; compliance must be achieved prior to start-up), • develop and implement a written action plan within 60 days (or in the time specified by the EUB group), and • notify the EUB group that the High Risk noncompliance has been corrected/addressed in the specified time. The EUB group will also apply one or more of the following enforcement actions, as its authority provides: • noncompliance fees • self-audit or inspections • increased audits or inspections • partial or full suspension until the noncompliance is corrected/addressed • suspension and/or cancellation of permit, licence, or approval **What will happen if the licensee has a subsequent High Risk noncompliance during the period for development and implementation of its action plan?** Subsequent High Risk noncompliance events that occur in the same compliance category during this time will result in additional High Risk Enforcement Actions 1. However, if a subsequent High Risk noncompliance during this time results in the determination of persistent noncompliance, High Risk Enforcement Action 2 may be initiated. **When is compliance achieved for this event?** Immediately after the licensee corrects/addresses all of the requirements of High Risk Enforcement Action 1 to the satisfaction of the EUB group. **What will happen if the licensee does not comply with the requirements of High Risk Enforcement Action 1?** The licensee will be subject to High Risk Enforcement Action 3.	**What will happen if a specific High Risk noncompliance event results in the licensee being identified as persistently noncompliant?** To address the specific noncompliance event, the licensee must • immediately correct/address the High Risk noncompliance, • develop and implement a written action plan within 30 days (or in the time specified by the EUB group), • if operations were suspended, have the action plan approved by the EUB group before start-up, and • notify the EUB group that the noncompliance has been corrected/addressed in the specified time. To address why previous action plans have not improved performance, the licensee must also • develop and implement a written action plan acceptable to the EUB group that - addresses the root causes of previous noncompliance events, - details what the licensee will do to prevent future noncompliance events in this compliance category/categories, and • review the action plan with the EUB group in a meeting. The EUB group will also apply one or more of the following enforcement actions, as its authority provides: • noncompliance fees • self-audit or inspections • increased audits or inspections • third-party audits or inspections • partial or full suspension • suspension and/or cancellation of permit, licence, or approval **What will happen if the licensee has a subsequent High Risk noncompliance during the period for development and implementation of its action plan?** Subsequent High Risk noncompliance events that occur in the same compliance category during this time will result in additional High Risk Enforcement Actions 2. However, if conditions warrant, the EUB may escalate a licensee to High Risk Enforcement Action 3. **When is compliance achieved for this event?** Compliance is achieved when • the licensee corrects/addresses all of the requirements of High Risk Enforcement Action 2 to the satisfaction of the EUB group, and • no additional High Risk noncompliance occurs within the compliance category for 60 days (or a period of time specified by the EUB) from the date of action plan acceptance by the EUB.	**What will happen if** • **the licensee does not comply with the requirements of the High Risk Enforcement Action 1 or 2, or** • **the EUB determines that enforcement starts with High Risk Enforcement Action 3 due to demonstrated disregard of EUB requirements?** The licensee must • immediately correct/address the High Risk noncompliance, • if necessary, suspend operations (partial or full), when safe to do so, to remove existing or potential impact/hazard (suspension will not occur if it results in an increased impact/hazard to the environment or the public), • develop and implement a written action plan acceptable to the EUB group that - addresses the root causes of noncompliance events, and - details what the licensee will do to prevent future noncompliance events in this compliance category, and • meet with the EUB group to review and have the action plan approved before the start-up of operations if operations were suspended. The EUB group will also apply one or more of the following enforcement actions, as its authority provides: • noncompliance fees • self-audit or inspections • third-party audits or inspections • partial or full suspension • suspension and/or cancellation of permit, licence, or approval • issuance of an Order (Miscellaneous, Closure, or Abandonment) • "Refer" status: focused or global **When is compliance achieved for this event?** Compliance is achieved when • the licensee corrects/addresses all the requirements of High Risk Enforcement Action 3 to the satisfaction of the EUB group, and • no additional High Risk noncompliance occurs within the compliance category for 180 days (or a period of time specified by the EUB) from the date of action plan acceptance by the EUB. **What will happen if the licensee does not comply with the requirements of High Risk Enforcement Action 3?** The licensee will be required to meet with senior EUB personnel and will be subject to escalated enforcement action.

* Senior EUB personnel will contact the licensee before enforcement actions are escalated.

When may the EUB initiate prosecution for noncompliance?

The EUB may refer a matter to prosecution when it believes a licensee has acted with demonstrated disregard. The EUB will gather detailed information regarding the noncompliance event and make a determination whether to refer a matter to prosecution on a case-by-case basis.

5 Enforcement Appeals

Licensees are encouraged to fully discuss enforcement actions with the EUB group prior to filing an appeal with the EUB Enforcement Advisor in the Corporate Compliance Group. Enforcement actions may be overturned at the group level. However, if enforcement actions are sustained at the group level, a licensee may submit an appeal to the EUB Enforcement Advisor. Licensees may appeal enforcement actions to the Enforcement Advisor that have not resulted in prosecution or issuance of a Board Order. The appeal must

- be submitted within 60 days of the date of the enforcement action,
- be in writing, and
- explain why the licensee disagrees with the enforcement decision.

The EUB will consider the information for errors of fact, regulatory requirements, and process. The timeline for a decision on appeals by the Enforcement Advisor is 10 working days after receipt of all required documentation.

If the appeal to the EUB Enforcement Advisor is denied or only partially granted, the licensee may appeal to the Board in writing within 15 days explaining why the licensee disagrees with the decision of the Enforcement Advisor.

6 Voluntary Self-Disclosure

What is voluntary self-disclosure?

The EUB encourages all licensees to actively monitor their compliance with the requirements through tools such as self-inspections and audits. When a licensee identifies a noncompliance, the EUB expects it to be corrected/addressed and reported to the EUB. In addition, the EUB expects the licensee to take the same action as if the EUB identified the noncompliance; for example, shut down immediately if there is a risk to public safety or environmental protection. The EUB's self-disclosure policy is intended to encourage licensees to proactively identify, report, and correct noncompliances.

What are the benefits of voluntary self-disclosure?

- Proactive correction of the noncompliance.
- No enforcement if licensees correct/address noncompliances during the time agreed upon with the EUB.
- Improved relationships between licensees and the regulator.
- Improved public safety, protection of the environment, conservation of the resource, and regulatory confidence.

What are the rules for voluntary self-disclosure?

To voluntarily self-disclose a noncompliance, licensees must

- be the first party to contact the EUB regarding the noncompliance, and
- take appropriate steps to correct/address it.

When self-disclosing a High Risk noncompliance, licensees must also

- immediately correct/address the noncompliance, including suspending operations if warranted, to ensure that risk to the public or environment is mitigated, and
- develop and implement a written action plan within 60 days of the High Risk noncompliance event (or in a time specified by the appropriate EUB group).

The EUB does not consider the following events to be self-disclosure:

- notification to the EUB of a noncompliance during a required performance presentation,
- notification to the EUB of a noncompliance in an application to restore compliance,
- notification after the EUB has started an audit, inspection, or investigation,
- notification to the EUB required by an act, regulation, directive, or condition of an approval being given late,
- notification to the EUB of a noncompliance that should have been fixed,
- licensee not the first party to contact the EUB,
- appropriate steps not taken by the licensee to address a noncompliance, or
- "self-disclosure" resulting in a competitive advantage.

7 Compliance Performance Information

Will any Orders resulting from a noncompliance be made public?

Yes. EUB enforcement Orders (Closure, Abandonment, and Miscellaneous) are currently included in the EUB Index of Board Orders (IBO) list and are on the EUB Web site www.eub.ca under Industry Zone : Compliance and Enforcement : Compliance Information.

How can the licensee access its compliance records?

For EUB Field Surveillance–related issues, licensees can currently access their event-specific and summary compliance category information via the EUB Digital Data Submission (DDS) system on the Web. The EUB is committed to improving the availability of comprehensive integrated compliance information as system developments allow. This information will enable licensees to monitor their progress and allow for continuous improvements to their compliance management systems.

Can stakeholders access a licensee's compliance information?

Yes. Stakeholders may contact licensees respecting specific compliance information. If a licensee does not release the information, stakeholders may use the Freedom of Information and Protection of Privacy (FOIP) process to request the information.

Also, the EUB publishes a comprehensive annual compliance report for all EUB compliance categories. Incident reports, which may contain specific noncompliance and related enforcement action information, are also published.

As systems develop, the EUB will make licensees' compliance summaries available on the EUB Web site.

Glossary

Action plan – A licensee's plan that corrects/addresses a specific Low or High Risk noncompliance event, including identification of the root causes(s) of the event and steps to be taken to prevent future occurrences. For persistent noncompliance, it must address the licensee's failure to improve overall compliance category performance with the implementation of previous event-specific remedial plans.

Compliance category (previously known as audit/inspection category) – Describes an activity or operation (e.g., drilling operations, gas facilities, pipelines). Each compliance category contains a group of noncompliance events related to a specific activity or operation. The EUB uses compliance categories to identify persistent noncompliance related to that activity or operation. For the list of compliance categories, go to the EUB Web site www.eub.ca under Industry Zone : Compliance and Enforcement : Compliance Categories and Contacts.

Demonstrated disregard – When a licensee knows or should know about a High Risk noncompliance issue/event but does not act to remedy the issue or event. An assessment of demonstrated disregard will be made on a case-by-case basis.

EUB group – A group within the EUB responsible for the administration of specific or particular compliance categories. Such groups are responsible for compliance assurance processes, including enforcement within each compliance category.

Licensee – For the purpose of this directive, the term licensee is used to designate the responsible duty holder (e.g., licensee, operator, company, applicant, approval holder, or permit holder) as specified in legislation.

Licensee compliance summary information – A report summarizing a licensee's compliance history.

Noncompliance fees – As prescribed by regulation for noncompliance.

Persistent noncompliance – Persistent noncompliance refers to an unacceptable rate, ratio, percentage, or number of noncompliances by a licensee, either in the same or in different compliance categories.

Refer status – An enforcement status (focused or global) that describes a licensee that is unable or unwilling to comply with the direction from the EUB. Refer status results in a more rigorous review of a licensee's pending and future applications, having regard for the compliance performance of the licensee. The Refer status is removed when compliance is achieved.

- **Focused refer** – An enforcement status that results in
  - the processing of applications respecting a specific activity or operation (e.g., pipelines, commingling, waste facilities) as nonroutine, taking in to consideration a licensee's compliance performance in one or more compliance categories or EUB groups,
  - the licensee's applications specific to this activity or operation being brought before the Board for disposition, and
  - possible additional terms or conditions on Business Associate codes, licences, or approvals.
- **Global refer** – An enforcement status that results in
  - all of the licensee's applications being processed as nonroutine,
  - all of the licensee's applications and decisions being brought before the Board for disposition, and
  - possible additional terms or conditions on Business Associate codes, licences, or approvals.

Senior EUB personnel – Section leader/delegate or compliance category management.